

IN THE SUPREME COURT FOR THE STATE OF TENNESSEE

BOBBY MacBRYAN GREEN,

§

PLAINTIFF / APPELLANT,

§

v.

§

JODI JONES,
HOWELL SHERROD,
BETTY ANN POLAHA, and
MARY LEE JONDAHL,

§

§

§

§

DEFENDANTS / APPELLEES.

§

Re: *Mandate of Appeal No.*
E2011-02587-COA-R3-CV

Civil Action No. 41049

FOR APPEAL FROM THE MANDATE OF THE COURT OF APPEALS REGARDING
THE JUDGMENT OF THE CHANCERY COURT OF WASHINGTON COUNTY,
AT JONESBOROUGH, TENNESSEE

APPLICATION FOR EXTRAORDINARY APPEAL

Primary basis : The *Mandate* is facially void for lack of appellate jurisdiction.

Bobby MacBryan Green
Applicant/Appellant/Plaintiff
404 Holly Street
Johnson City, TN 37604-7312
423.747.7206

APPLICATION FOR EXTRAORDINARY APPEAL

1. Because the *Mandate* issued by the Court of Appeals in this matter on 27 November 2012 is **facially void for lack of appellate jurisdiction**, Bobby MacBryan Green, applicant/appellant/plaintiff (“Green”), requests that the Tennessee Supreme Court grant permission for an extraordinary appeal. In support of this request, Green would respectfully call the Court’s attention to the following illegality and/or failure to proceed according to the essential requirements of the law :

2. The *Opinion*’s explicit holding regarding the counterclaim in this civil action makes the *Mandate* facially void for lack of jurisdiction and makes the *Mandate* itself interlocutory.

(a) The *Opinion* holds that the counterclaim is yet to be adjudicated and is not a subject of appeal:

President also raised an issue regarding the validity of the Board’s counterclaim. **This issue is not properly before this court because this appeal relates to the dismissal of the complaint, not the validity of the counterclaim.** Upon remand, the case may proceed on the Board’s counterclaim...

Opinion, page 8, bold added.

(b) Rule 4(a), Tennessee Rules of Appellate Procedure provides that

any order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is **not** enforceable or **appealable** and is subject to revision at any time before entry of a final judgment adjudicating all the claims, rights, and liabilities of all the parties.

Bold added.

(c) The *Mandate* has been issued in conflict with Rule 13(b), Tenn.R.App.P.:

....The appellate court **shall** also consider whether the trial and appellate court have jurisdiction over the subject matter, whether or not presented for review, and may in its discretion consider other issues

Bold added.

(d) By excluding the counterclaim from consideration, the Court of Appeals has impermissibly treated this matter as an interlocutory appeal absent the jurisdictional prerequisites set forth in Rule 9, Tenn.R.App.P. and Rule 54, Tennessee Rules of Civil Procedure.

(e) The *Mandate* has been issued without appellate jurisdiction, because the *Opinion's* holding regarding the counterclaim negates an essential jurisdictional requirement for the appeal of right : that all claims have been adjudicated. Under Rule 2, Tenn.R.App.P. the Court of Appeals is allowed to explicitly suspend the requirements of Rule 3, Tenn.R.App.P. under extraordinary circumstances, but that option was not pursued (and according to precedent would not have been appropriate). The essential requirements of law and the appearance of propriety require redress.

3. A further reason to vacate the *Mandate* is that the *Judgment* of the Court of Appeals conflicts diametrically with the *Opinion's* central holding.

(a) The *Opinion* emphasizes that Tennessee courts have no authority to consider or to become involved with the internal affairs of a voluntary association.

(b) The *Judgment* broadly affirms the attached *Final Decree* through which the trial

court became **totally involved** in the non-party voluntary association's affairs (although Green asserted no grievance against that association) : by declaring that the association had properly removed Green from the office of president, by declaring Jones to be the current president of the association, and by ordering the disposition of association property.

(c) The *Opinion* explicitly affirms the trial court's "finding that President had been properly removed as president of SNO." (*Opinion*, page 3). The *Mandate* thus creates precedent for adjudication in the context of a motion to dismiss, that an association's officer has been properly removed from office.

(e) The *Opinion* emphasizes that the trial court lacks authority to declare that Green **has not** been removed from office. However, the *Opinion* holds that the trial court **did** authoritatively declare that Green **has** been properly removed.

(d) The *Opinion* examines in detail and justifies the actions of the defendants, while citing precedent disallowing such examination.

(e) The *Mandate* thereby clearly manifests severe internal contradictions which will tend to misguide future trial court decisions.

4. This request for permission to pursue an extraordinary appeal is consistent with precedent.

The Tennessee Rules of Appellate Procedure do not contain an "election of remedies" provision that causes an appellant to forego all other appellate remedies once it decides to pursue one particular appellate remedy.

State v. Randy Meeks et al., 262 S.W.3d 710; 2008 Tenn. LEXIS 575. Furthermore, this

Court has previously denied permission for a Rule 11, Tenn.R.App.P. appeal and granted permission for a Rule 10, Tenn.R.App.P. appeal in the same civil action (see Brooks v. Carter, 993 S.W.2d 603; 1999 Tenn. LEXIS 275). This Court has repeatedly vacated Rule 3, Tenn.R.App.P. mandates wherein all claims had not been fully adjudicated. There exists no time constraint on the filing of an extraordinary appeal.

5. Green initiated appeal number E2011-02587-COA-R3-CV as an appeal of right in reliance upon representations that the *Final Decree* disposed of all issues, that the *Final Decree* was immediately enforceable, and that the counterclaim had been withdrawn. When Green filed his *Application for Permission to Appeal*, the defendants failed to file any answer challenging the *Opinion's* holding that the counterclaim remained unaddressed, choosing instead to allow that holding to be mandated. This application for an extraordinary appeal has been necessitated by that choice of the defendants.

6. Green informed this Court of facts demonstrating the jurisdictional status of this matter on 6 September 2012 : Green's Rule 11 *Application for Permission to Appeal* stated that the trial court's *Final Decree* omitted mention of the counterclaim, and that the Court of Appeals *sua sponte* had remanded the counterclaim for discovery and trial.

7. A manifest injustice has thus been created by remand of the \$150,000.00 counterclaim alleging false claims to office by Green, accompanied by law of the case establishing that while the trial court lacks authority to declare that Green **has not** been removed from office, the trial court **did** authoritatively declare that Green **has** been properly removed. This imbalance is antithetical to justice.

8. Green would have benefitted from dismissal of the appeal for lack of appellate

jurisdiction. Once the *Final Decree* was authoritatively identified as an unappealable and unenforceable order, Green would have become free to politically confront the fraudulent actions of the defendants. Instead, by the *Final Decree* and now the *Mandate*, Green has been forced from his elected office while the defendants (being mother, daughter, and her nearest neighbor) acting in concert with judicial imprimatur manage the neighborhood association much like a “bridge club” (their characterization; Transcript, page 10, line 14).

9. A procedural overview is incorporated as Endnote One. An overview of facts and issues is incorporated as Endnote Two. The trial court’s *Final Decree* as well as the *Judgment* and *Opinion* of the Court of Appeals are attached.

10. QUESTIONS PRESENTED include :

- (a) Shall the *Mandate* be vacated for lack of appellate jurisdiction?
- (b) Is the trial court’s ruling on Green’s Rule 59 motion void due to non-finality of the *Final Decree*?
- (c) Is the *Final Decree* enforceable at this time?
- (d) Does the *Mandate* manifest internal contradictions of such severity that it must be vacated or reversed?

11. THEREFORE, Green requests that this Court :

- (a) Grant permission for an extraordinary appeal; and thereafter,
- (b) Vacate the *Mandate* issued on 27 November 2012 for lack of appellate jurisdiction; and
- (c) Declare the *Final Decree* to be unenforceable at this time; and
- (d) Vacate the trial court’s ruling on Green’s *Motion to Alter or Amend*, due to non-

finality of the *Final Decree*.

- (e) Assess all costs in this civil action equally against each individual party; and
- (f) Grant all additional relief to which Green may be entitled.

* * * * *

ENDNOTE ONE > CURSORY PROCEDURAL OVERVIEW

Green petitioned the Chancery Court to restrain the individual named defendants from concerted fraud, bad faith, and breach of contract. Defendants counterclaimed. Green filed sworn supplemental pleadings. Attached to their motion to dismiss, the defendants filed affidavits. Just two weeks later the trial court considered the defendants' affidavits and entered the *Final Decree* declaring Green to have been properly removed from his elected office as president of a neighborhood association and ordering Green to deliver property to the defendants. Green's Rule 59 motion was denied. Green filed an appeal of right. The Court of Appeals reviewed as a summary judgment matter and affirmed the *Final Decree*, after holding that it lacked authority to consider the counterclaim, remanding it for trial. Green was denied permission to appeal. The *Mandate* was issued on 27 November 2012.

ENDNOTE TWO > CURSORY OVERVIEW OF FACTS AND ISSUES

A. Against the outspoken wishes of the old guard, Southside Neighborhood Organization overwhelmingly elected Green as its president for a definite term of two

years pursuant to bylaw. Having been adopted in the bylaws as the governing authority, Roberts Rules are an integral component of those bylaws. Representing the old guard faction, the VP Jodi Jones unilaterally called a special meeting of the executive board (which Green naively failed to reorganize after his election) on four days notice while Green was known to be briefly out of state. Three board members were never notified of the call. Five out of twelve board members attended that gathering, and proclaimed the VP president. Upon Green's return, he protested the bad faith, fraud, and breach of contract ; all parties to this action had signed a written pledge to support the bylaws. The trial court precipitately declared the VP president and enjoined Green. Soon afterward, with neither notice nor hearing, Polaha mailed to Green a letter purporting to strip him of his membership also.

B. The defendants counterclaimed for up to \$50,000.00 each, alleging that Green's ongoing claims to his elected office constitute harassment.

C. Issues raised by the *Opinion*, if it is not vacated, include:

(1) In essence, the *Opinion* holds that "the Board" (a term which the *Opinion* throughout equates only with Jones/Polaha/Jondahl rather than with the genuine twelve member board) held a *vote*, the effect of which was immediate, and nothing else matters.

(2) The *Opinion* states that there was no need to look to the governing parliamentary Authority adopted in the bylaws – although questions of notice, quorum, charges, as well as what constitutes a 'meeting' and a 'vote' are central to Green's allegations concerning fraud, bad faith, and breach of contract.

(3) The *Opinion* holds that neither the bylaws nor the signed pledge create any

contractual relationship and that the controlling consideration is a statement in the bylaws that:

The Executive Board shall have the authority and the responsibility to discharge by a three-fourth (3/4) vote any officer or committee chair who becomes incapacitated or otherwise fails to carry out the responsibilities of the office.

The record contains evidence that Jones fraudulently proclaimed Green incapacitated, that Green fully carried out his responsibilities, that the power of discharge is not a broad-spectrum power, and that the basic parliamentary and common law requirements for a 'vote' and a 'meeting' were never met.

* * * * *

CERTIFICATE OF SERVICE

I am the applicant/appellant/plaintiff in this matter. I hereby certify that on this day I served a true and accurate copy of the attached APPLICATION FOR EXTRAORDINARY APPEAL upon the attorney for the defendants :

Howell Sherrod, Jr.
SHERROD, GOLDSTEIN & LEE
249 East Main Street
Johnson City, TN 37604

by placing the same in an official depository of the U.S. Postal Service, first class, postage prepaid,

on this the ____th day of December 2012.

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